

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1625 of 1983

Hon'ble MR.JUSTICE Y.B.BHATT

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DAHYABHAI MAHIJIBHAI

Versus

PATEL PRABHUBHAI CHATUBHAI

Appearance:

MR SN SHELAT for Petitioner

MR NAGIN N GANDHI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 19/06/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the original plaintiff-landlord who had sued the respondents-defendants, treating the first defendant as a tenant who was liable to be evicted for inducting defendant nos.2 and 3 as illegal sub-tenants. The suit had also been filed on the ground

that the tenant was in arrears of rent for more than six months.

2. The trial court, after appreciating the evidence on record, dismissed the suit of the plaintiff on both the grounds. The plaintiff-landlord, therefore, preferred an appeal under section 29(1) of the Bombay Rent Act. It may be noted here that the rejection of the suit on the ground of arrears of rent was not urged i.e. not pressed before the lower appellate court. Accordingly the lower appellate court has not dealt with this aspect of the matter. However, the lower appellate court has extensively dealt with the submissions based upon the appreciation of the evidentiary material on record on the alleged subletting by the first defendant in favour of the defendant nos.2 and 3. The lower appellate court, after appreciating the entire evidentiary material on record, was pleased to dismiss the appeal. Hence the present revision under section 29(2) of the Bombay Rent Act.

3. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Hohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

4. Only a few salient features require to be noted for the purpose of the present decision.

5. It may be noted for the record and for the sake of clarification that the plaintiff has not sued for a decree of possession against the first defendant in his capacity as the owner of the property, but only in the capacity of "a landlord" within the meaning of section 5(3) of the Bombay Rent Act. There is no controversy

that the plaintiff, though he is not the owner of the property, is entitled to sue the first defendant as if the first defendant were the tenant of the plaintiff. The relevant facts have been narrated by the lower appellate court in paragraph 17 of the judgement.

6. The only real issue which arises in the present revision is as to whether the findings of fact recorded by the trial court and confirmed by the lower appellate court require any interference in the present revision.

7. It was first contended that the first defendant has illegally sublet the suit premises to one Dharamsing Ugabhai Patel, but as noted by the lower appellate court, except the bare oral assertion by the plaintiff, there is absolutely no evidence whatsoever that the said alleged sub-tenant was ever in exclusive possession in respect of the suit premises. This has been amply dealt with by the lower appellate court in paragraphs 19 and 20 of the judgement.

8. It was then contended that the first defendant has illegally sublet the premises to defendant no.2, who is running a diamond polishing factory in the suit premises. In support of this contention the plaintiff has produced the application of the second defendant for a licence under the Shops and Establishments Act (Exh.44) and the relevant extracts from the Register maintained under the said Act at Exh.45. Both these documents indicate that the defendant no.2 does labour work of diamond polishing. Furthermore, neither of these documents indicate that the second defendant was in exclusive possession of the suit premises. Moreover, both the defendant nos.1 and 2 have deposed, without any contrary evidence being produced by the plaintiff, that the second defendant was permitted to use the diamond polishing machines belonging to the first defendant, as a licensee of the first defendant. Furthermore, the second defendant was not permitted to use all the machines belonging to the first defendant. Obviously, therefore, these documents do not in any manner show transfer of any interest in the suit premises in favour of the second defendant.

9. Even the report of the Court Commissioner at Exh.76 and deposition of the said Commissioner at Exh.75 also indicate that although there were six diamond cutting machines in the suit premises, the second defendant was using only some of those machines. There is absolutely no evidence to indicate that any of the machines was of the ownership of the second defendant.

On the other hand, there is credible evidence to establish that all the machines were of the ownership of the first defendant. Furthermore, there is absolutely no evidence whatsoever that the first defendant charged the second defendant any valuable consideration for using the suit premises. Moreover, there is absolutely no evidence to establish that the second defendant was at any point of time in exclusive possession or control of the suit premises. Under these circumstances the lower appellate court was amply justified in holding that the plaintiff has failed to establish that the second defendant was the sub-tenant of the first defendant in the suit premises.

10. So far as the third defendant is concerned, the lower appellate court has found, on the basis of incontrovertible evidence on record, that the third defendant is the real brother (brother by full blood) of the first defendant, that the third defendant has been permitted by the first defendant to run a dispensary only in part of the suit premises, and the rest of the suit premises is still occupied by the diamond polishing machines belonging to the first defendant. Thus, it is found that the third defendant is not in exclusive possession of the suit premises, or even part of the premises, that he is merely permitted to run a dispensary on temporary basis since there is a dull phase and/or depression in the diamond polishing business. In fact all the six polishing machines of the first defendant are still lying on the suit premises. Thus, firstly the first defendant has not parted with the exclusive possession of the suit premises, and the permissive user granted by the first defendant in favour of his real brother is only in respect of part of the premises and that too for a limited period. Furthermore, there is absolutely no evidence that the first defendant realises any valuable consideration from the third defendant. There cannot be any presumption that a person would charge any consideration from his real brother for such temporary occupation of part of the premises. Furthermore, there is incontrovertible evidence on record at Exh.81, etc. which establish that the first and third defendant are members of the same joint family who are living together. In my opinion, therefore, the lower appellate court was amply justified in holding that in the absence of proof of subletting for valuable consideration, it could not possibly be held, on the facts of such a case, that the first defendant has illegally sublet part of the suit premises to defendant no.2.

11. Learned counsel for the petitioner has sought

rely upon a decision of this court in the case of Harshachandra Vs. Ibrahim, reported at 26(1) GLR page 192. The said decision lays down the principle that section 13(1)(e) of the Bombay Rent Act is much wider and is not confined merely to acts of "unlawful subletting". It also provides that if a tenant has assigned or transferred in any other manner his interest in the premises taken on lease by him, then also the landlord would become entitled to a decree for possession. The words "transfer in any other manner" are much wider and would including within their meaning and ambit a transfer made in favour of a relative or a known person, once it is proved that he has left the premises, and the transferee is put in exclusive possession. There cannot be any quarrel with the principle laid down in this decision. In order to bring the case within the ambit of section 13(1)(e), the plaintiff would undoubtedly be required to establish by incontrovertible evidence that (i) the tenant has left the premises and (ii) the transferee is put in exclusive possession of the leased premises. On the facts of this case, as found by both the courts below, both these factual aspects have not been established. This decision, therefore, would be of no assistance to the landlord.

12. In the premises aforesaid, I find that there is no ground for interference with the findings of fact recorded by the two courts below, and/or for interfering with the same by way of the present revision. This revision is, therefore, required to be dismissed and is accordingly dismissed. Rule is discharged with no order as to costs.
